

PATTON BOGGS LLP
ATTORNEYS AT LAW

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FEDERAL ELECTION COMMISSION
COMMUNICATIONS SECTION

DEC 16 4 56 PM '98

December 16, 1998

Benjamin L. Ginsberg
202-457-6405
bginsberg@pattonboggs.com

VIA COURIER

Andrew Turley, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 4839

Dear Mr. Turley:

As counsel to the campaigns and individuals named in the above-captioned MUR, enclosed is their response to the complaint filed in this matter.

Thank you for your attention.

Sincerely,


Benjamin L. Ginsberg

BEFORE THE FEDERAL ELECTION COMMISSION

FEDERAL ELECTION COMMISSION

DEC 15 4 56 PM '98

HULSHOF FOR CONGRESS AND)
JOHN E. BECKER, SR., TREASURER,)
THE HONORABLE KENNY C. HULSHOF,)
FEDERER FOR CONGRESS AND JAMES J. TABOR,)
TREASURER, BILL FEDERER, AND CHUCK)
PIERCE FOR STATE AUDITOR COMMITTEE)

MUR 4839

RESPONSE TO COMPLAINT

Hulshof for Congress and John E. Becker, Sr., as Treasurer, the Honorable Kenny C. Hulshof, Federer for Congress and James J. Tabor, as Treasurer, and Bill Federer (collectively, the "Respondents"), by and through the undersigned counsel, hereby respond to the complaint in the above-captioned Matter Under Review. Because the complaint is based upon an erroneous factual assumption and otherwise lacks merit, Respondents respectfully request that the Commission take no further action in this matter, and dismiss the complaint.

I. THE COMPLAINT IS FACTUALLY INCORRECT

Distilled to its essence, the complaint asserts that a candidate for state office (specifically, State Auditor) purchased several 30-second spots of media time, and then unlawfully contributed a portion of that time to Federal candidates. This assumption is factual inaccurate, as is the complaint's unsubstantiated assertions that "the Republican candidate for State Auditor . . . purchased [the] 30-second spots" at issue, which were, "however, paid for in [this] entirety by the State Auditor's committee."

The facts themselves demonstrate why there is no violation of the Federal Election Campaign Act or the Commission's Regulations. The candidate for state office did not purchase time for the Federal candidates. None of the candidate committees involved ever paid for another candidate committee's media time. Affidavit of Paul Wilson ("Wilson Aff.") at ¶ 4. Each Respondent campaign paid for its time directly by the standard practice of transferring funds to their

retained media consultants whose contractual duties included the writing and production of the television and radio advertisements at issue, negotiating with the television and radio stations regarding air time, placing the media buys, and sending funds to the stations for the media buy after collecting them from the campaign. Wilson Aff. ¶ 2. This is standard practice for political campaigns. Wilson Aff. ¶ 3.

The complainant's confusion appears to stem from the fact that the Hulshof for Congress Committee and the Pierce for State Auditor Committee both retained the same media vendor -- Wilson-Grand Communications. Wilson Aff. ¶ 1. Federer for Congress hired Consensus Marketing. See Exhibit D. All three committees paid these outside vendors to secure the media time and produce the ads at issue. Both federal committees reported these expenditures to the Commission. The spots' disclaimers in the ads at issue were the responsibility of these consultants. Wilson Aff. ¶ 2. Once the consultants decided on a particular media buy, the respective committees forwarded funds for the purchase of media time. Wilson Aff. ¶ 3; Exhibits B,C and D (wire transfers and checks from the three committees for media buys).

As demonstrated by both the federal committees' reports to the Commission and the attached documentation and affidavit, the complaint's factual predicate regarding the purchase of the time is incorrect. The State candidate did not purchase the air time or advance the cost of air time for any other candidate. Wilson Aff. ¶ 4. The federal candidates paid their media consultants who paid the stations the usual and normal rates for the time used. Thus, this matter is no different than any other permissible joint sale or purchase transaction involving state and Federal candidates. e.g. See Advisory Opinion ("AO") 1992-19 (permitting a lease of a computer system from a state campaign to a Federal campaign). Accordingly, the complaint ought to be dismissed.

II. THE PURCHASE OF THE MEDIA TIME WAS NOT A CONTRIBUTION

The complaint, anticipating its factual infirmity on the payment for the ads, makes much of what it characterizes as a "significant savings" by the Federal candidates. Again, the complaint is incorrect. Here, no candidate committee received a "significant savings." Instead, the cost of the media time was paid for by each candidate committee in proportion to the amount of time each used at the usual and normal rate. Wilson Aff. ¶ 6.

The Regulations and prior Commission rulings permit campaigns to utilize any economies of scale. In addition, expenditures on behalf of a clearly identified Federal candidate and disbursements on behalf of a non-federal candidate are permissibly attributed to each such candidate according to the benefit expected to be derived by each candidate. 11 C.F.R. § 106.1(a)(1); AO 1978-67. As explained in AO 1994-37:

Commission regulations note that, in the case of a campaign publication or broadcast communication, the attribution may be determined by the proportion of space or time devoted to each candidate as compared to all candidates.

AO 1994-37 at 3. Similarly, in AO 1992-18, the Commission stated:

In the past, when the Commission has examined sale or purchased transactions between state and Federal committees, the concern has been that such transactions be conducted under current market practices and be at usual and normal charges.

AO 1992-19 at 2.

Respondents paid for their media time in accordance with these Advisory Opinions. First, the cost of the media time was determined by the media consultants, who in turn told each campaign what it owed. The campaigns then sent the necessary funds to the vendors, who paid the stations for the time they had reserved in advance of the broadcasts. Wilson Aff. ¶¶ 3, 4. This is standard industry practice. *Id.* The cost of the media time paid for by the respective campaigns was in proportion to the benefit received by them, *i.e.*, the usual and normal rate for the amount of media time utilized. Wilson Aff. ¶¶ 4, 6. Because each campaign received the benefit of fifteen

seconds of media time, each campaign paid the usual and normal rate for one half of a thirty second buy. Wilson Aff. ¶ 6.

Second, there is no dispute that the amount paid by the federal campaigns represents the fair market value of the media time each used, and the complaint's assumptions regarding the value of a fifteen second ad are besides the point. What is beyond question is that the campaigns paid the television stations fair market value for the media time at issue. Wilson Aff. ¶ 6. Such payment was made pursuant to an arms length transaction, and the stations agreed to allow the advertisements to be aired in the manner presented by the outside vendors. *Id.*

The stations did not provide the Respondents with any sort of a discount, or "significant savings." Thirty-second ads are universally available. *Id.* Dividing the ads between two entities is also available to any advertisers who ask to do it. Stations screen ads before allowing them on the air. The simple fact is that the Respondents took advantage of something available to other advertisers and did not receive any special treatment. Instead, the commercial decision made by the stations to run a subdivided thirty second advertisement cannot now be second-guessed. Therefore, there can be no dispute that the stations received the fair market value for the airing of the advertisements at issue. Accordingly, this complaint should be dismissed.

III. PIERCE FOR STATE AUDITOR

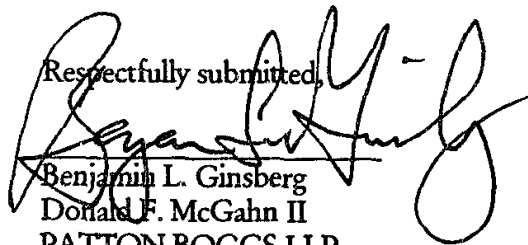
The complaint includes allegations involving the Pierce for State Auditor Committee. The Commission should dismiss these allegations. As a candidate for state office, the Pierce campaign does not fall under the Commission's jurisdiction, unless it made illegal contributions to a federal campaign. As the above explanation and the attached affidavit of Paul Wilson demonstrate, the Pierce campaign did not make any contributions to federal campaigns. It did send funds to Wilson Grand Communications for ads, some of which were shared equally in time and cost with federal

campaigns, but at no time did it advance or pay for advertisements for any campaign but Mr. Pierce's.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Commission dismiss the complaint.

Respectfully submitted,



Benjamin L. Ginsberg
Donald F. McGahn II
PATTON BOGGS LLP
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Dated: December 16, 1998

BEFORE THE FEDERAL ELECTION COMMISSION

HULSHOF FOR CONGRESS AND
 JOHN E. BECKER, SR., TREASURER,
 THE HONORABLE KENNY C. HULSHOF,
 FEDERER FOR CONGRESS AND JAMES J. TABOR,
 TREASURER, AND BILL FEDERER

MUR 4839

AFFIDAVIT OF PAUL WILSON

I, the affiant, Paul Wilson, based upon my personal knowledge, information and belief hereby state:

1. I am the Chairman and CEO of Wilson Grand Communications, located at 407 N. Washington Street, Alexandria, Virginia. Wilson Grand is a political advertising agency, and among our clients for the 1998 election cycle were the Hulshof for Congress Committee in the Ninth congressional district of Missouri and the Pierce for State Auditor (of Missouri) Committee. My firm served in this role for all times material to the pending Matter Under Review (MUR) 4839.

2. As the advertising agency of record for both the Hulshof and Pierce campaigns, my firm's duties included the writing and production of television and radio spots needed by the campaigns, including the ones at issue; negotiating with the television and radio stations to buy the air time the campaigns wanted; placing the media buys with the various television and radio stations; sending the funds to the stations after we had collected them from the campaigns and determining if the spots actually ran by checking station affidavits and reconciling all television buys. My firm was responsible for placing the disclaimers on all spots.

3. It is standard practice in the industry for a media firm such as ours to formulate a media budget and buy schedule for a campaign. Once agreed to in general terms by a campaign, the media firm will reserve the time for the campaign with the stations. After reserving the time, the station informs us of the cost of airing the ads. All payments to the stations must be in

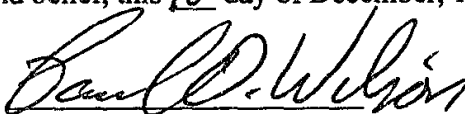
advance of broadcast. As a matter of course, we inform the campaigns how much the ads will cost and tell them to send us a wire transfer or a check to cover the cost. As a firm, Wilson Grand never advances a campaign the cost of a broadcast ad, and did not in this case. Once we receive the funds from a campaign, we then pay the stations the amount owed in advance of the actual broadcast.

4. In this case, the allegation that the Pierce for State Auditor campaign used any funds to cover the costs of a Hulshof for Congress or Federer for Congress ad is absolutely false. Common sense would dictate no campaign would buy commercials for another unrelated campaign. Nor did the Pierce campaign purchase airtime for either of the federal campaigns. . Wilson Grand reserved time for spots, and each campaign paid us directly for the cost of the time their own commercials aired. Once we had collected the funds, we sent the amount required to the stations. No campaign covered in any way the costs of another campaign. Both campaigns reported the purchase of airtime through Wilson Grand Communications as the FEC and the State of Missouri require.

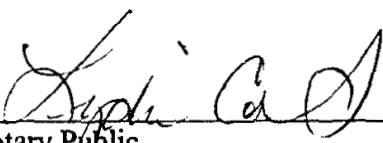
5. As a media vendor, we did see an opportunity to buy 30-second spots for our clients and, if they ran, to split the time and costs between two campaigns. We believed this to be an effective political tactic that has been common practice now for over a decade.

6. Neither of the campaigns received any "savings" since, whenever we split a 30-second ad, we charged each campaign precisely one-half of the cost of the spot in return for their use of precisely one-half of the time in the spot, providing the spot ran as verified after receipt of station affidavits attesting to the fact the spot ran. The stations set the rate, Wilson Grand merely divided the cost between the campaigns.

I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief, this 16 day of December, 1998.


Paul O. Wilson

SUBSCRIBED AND SWORN TO before me
this 11/24 day of December, 1998.


Notary Public

My Commission Expires: 11/30/02

MISC. CREDIT

VIRGINIA COMMERCE BANK

5350 LEE HIGHWAY, ARLINGTON, VIRGINIA 22201

DATE 10-7-98

BY [Signature]

(Authorized)

Account Number

30044658

Your Account
Has Been
CREDITED
As FollowsWilson Grand Communications
for Congress

\$19,869.25

Wilson Grand Communications
407 N Washington Street
Alexandria, VA 22314DO NOT FAIL
TO MAKE THIS
ENTRY IN YOUR
ACCOUNT

014

DUPLICATE

place →

MISC. CREDIT

VIRGINIA COMMERCE BANK

5350 LEE HIGHWAY, ARLINGTON, VIRGINIA 22201

DATE

BY

(Authorized)

Account Number

30044658

Your Account
Has Been
CREDITED
As FollowsWilson Grand Communications
for Congress

\$3021.00

Wilson Grand Communications
407 N Washington St
Alexandria, VA 22314DO NOT FAIL
TO MAKE THIS
ENTRY IN YOUR
ACCOUNT

014

DUPLICATE

place →

MISC. CREDIT

VIRGINIA COMMERCE BANK

5350 LEE HIGHWAY, ARLINGTON, VIRGINIA 22201

DATE 10-16-98

BY [Signature]

(Authorized)

Account Number

30044658

Your Account
Has Been
CREDITED
As FollowsWilson Grand Communications
for Congress

\$71,255.25

Wilson Grand Communications
407 N Washington Street
Alexandria, VA 22314DO NOT FAIL
TO MAKE THIS
ENTRY IN YOUR
ACCOUNT

014

DUPLICATE

place →

MISC. CREDIT

VIRGINIA COMMERCE BANK
5300 LEE HIGHWAY, ARLINGTON, VIRGINIA 22201

DATE 12-23-98

BY

20

(Authorized)

Account Number

80044658

Your Account
Has Been
CREDITED
As Follows

Wire Transfer for Congress \$125,889.35

Wilson Grand Communications
407 N. Washington Street
Alexandria, VA 22314

DO NOT FAIL
TO MAKE THIS
ENTRY IN YOUR
ACCOUNT

014

DUPLICATE

place

MISC. CREDIT

VIRGINIA COMMERCE BANK
5300 LEE HIGHWAY, ARLINGTON, VIRGINIA 22201

DATE 10-27-98

BY

20

(Authorized)

Account Number

80044658

Your Account
Has Been
CREDITED
As Follows

Wire Transfer for Congress \$5000.00

Wilson Grand Communications
407 N. Washington Street
Alexandria, VA 22314

DO NOT FAIL
TO MAKE THIS
ENTRY IN YOUR
ACCOUNT

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DUPLICATE

place
split.

1204 666 40 02

EC-157,865

DATE 10-30-98

DATE OF	Wilson - Grand Communications	\$72,000
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Seventy - Two Thousand + ⁰⁰/₁₀₀ -



JEFFERSON BANK
OF MISSOURI
JEFFERSON CITY, MISSOURI 65107

Charles Pierce

[illegible]

Wilson Grant Communications

014

face

Wilson Ground Communications
407 N. Washington St.
1100r drive Jan 22314

014

place

Wilson Gerald Cummings
407 N. Washington Street
Alexandria, VA 22314

014

Place

MISC. CREDIT

VIRGINIA COMMERCE BANK
1150 E. HIGHWAY, ARLINGTON, VIRGINIA 22201

DATE 11-26-82 BY [Signature]

(Authorized)

ACCOUNT NUMBER

20044658

YOUR ACCOUNT
HAS BEEN
CREDITED
AS FOLLOWS

Wire Transfer to [unclear] \$41,000.00

Wire Transfer to [unclear]
717 N. Washington Street
Alexandria, VA 22314

DO NOT FAIL
TO MAKE THIS
ENTRY IN YOUR
ACCOUNT

014

DUPLICATE

place

ED 04 40 03

VIRGINIA
[unclear]
[unclear]
[unclear]
[unclear]

77



Invoice No.: 6068
Invoice Date: 10/27/98

PAGE: 1 OF 1

To: Federer for Congress
12048 Tesson Ferry
St. Louis, MO 63128

Radio Advertising.....\$6,239.40

PAID 10/27/98
CHK # 1221

Grand Total.....\$6,239.40

Original Copy



PAGE: 1 OF 1

Invoice No.: 6071
Invoice Date: 10/15/98

To: Federer for Congress
12048 Tesson Ferry
St. Louis, MO 63128

Television Advertising \$30,000.00

pd 10-22-98 check # 1215

Grand Total \$30,000.00

Original Copy

FEDERER FOR CONGRESS COMMITTEE
P.O. BOX 5873
ST. LOUIS, MO 63123

DISCORD BANK
ST. LOUIS, MO 63123
4-7/2/810

CLEAR 215

10/22/98

PAY TO THE ORDER OF Consensus

Thirty Thousand and 00/100*****

Consensus
1650 Des Peres Road
Suite 150
St. Louis, MO 63131

MEMO

⑈001215⑈ ⑆081007022⑆

00102018⑈

David J. Taylor

⑈0003000000⑈

RETURNED BY	
0810-0091-9	
NOT PAID - NSF	

<input type="checkbox"/> Uncollected	<input type="checkbox"/> Stop Print
<input checked="" type="checkbox"/> Acct. Closed	<input type="checkbox"/> Endorsement
<input type="checkbox"/> Other	<input checked="" type="checkbox"/> X

DOLLARS
Security Features
Indicate on Back

\$ **30,000.00

2404" 666" 40" 03

ENDORSE HERE

X

PAY TO THE ORDER OF
CASS BANK & TRUST CO.
ST. LOUIS, MO., OR ORDER
FOR DEPOSIT ONLY
MEDICOM MARKETING, INC.
#400-080-02

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE *

CREDITED TO THE ACCOUNT OF
THE WITHIN NAMED PAYEE
ABSENCE OF ENDORSEMENT GUARANTEED 2

CASS BANK & TRUST CO.
ST. LOUIS, MISSOURI

CASS BANK
AND TRUST
ST. LOUIS, MO.
>081 000 605<

SEP 26 93

016201183 102628 03 400000002

0810000045

0810000045

16 JUN 93

FEDERAL RESERVE BOARD OF GOVERNORS U.S.A. CO

CheckLock Security System: Chemically Reactive Paper - No-Print
Signature Line, Patented on the front and Original Document
Security Screen on the back.

FEDERER FOR CONGRESS COMMITTEE

Consensus

Media Air Time
Printing

10/30/98

1235

6,900.00
2,643.47

PAYMENT
RECORD
No Invoice

Checking - Concord B

9,543.47